IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

SANWTA RAM. V. THE STATE OF RAJASTHAN.

D. B. CRIMINAL APPEAL NO.874/2002
against the Judgment dated 16.09.2002, passed by Mr. Rajendra Kumar Pareekh, RHJS, Additional Sessions Judge (Fast Track), Ratangarh, in Sessions Case No.78/2001 (State of Rajasthan v. Sanwta Ram).

DATE OF JUDGMENT: OCTOBER 04, 2006.

P R E S E N T

HON'BLE MR. JUSTICE N. N. MATHUR

HON'BLE MR. JUSTICE R. P. VYAS

Mr.M. K. Garg, for Appellant.
Mr. J. P.S. Chaudhary, Public Prosecutor.
Mr.S. G. Ojha, for Complainant.

BY THE COURT: (PER HON'BLE MR. R. P. VYAS, J.)

This criminal appeal under Section 374 (2), Cr. P. C., is directed against the Judgment dated 16.09.2002, passed by the Additional Sessions Judge (Fast Track), Ratangarh, District Churu, whereby appellant Sanwtaram has been convicted under Section 302, IPC, and sentenced to life imprisonment along with a fine of Rs.500/-, in default of payment of fine, he has further

been ordered to undergo simple imprisonment for three months.

Briefly stated, the prosecution story as unfolded during trial is that on 30.04.2001, at 2.30 a.m., one Dharmaram s/o. Shri Ganesharam made a 'parcha-bayan' to the Police that in the night at around 10.30 p.m., Moolaram s/o. Laduram came to his residence and informed him (Dharma Ram) and his brother Kalyana Ram that at around 10.00 p.m., Sanwata Ram S/o. Bhagwana Ram, in order to do away with Jetha Ram, inflicted Barchhi blow on his head, who is lying near Khejra tree of the School.

On receiving this information, Dharma Ram, his brother Kalyana Ram and his cousin Nanu Ram went to the scene of the occurrence and found that Jetha Ram was lying in the pool of blood, having extensive injury on his head. They called Jetha Ram, but he did not respond as he (Jetha Ram) was lying unconscious. It was further averred in the Parcha Bayan that on raising hue and cry, Sanwar Mal s/o. Nanu Ram came to the scene of the occurrence. In order to shift injured to the hospital, he asked Sanwar Mal to bring a cattle-cart. He brought cattle-cart, they lifted injured Jetha Ram and placed in the cattle-cart and proceeded for Ratangarh Hospital. On the way, request was made to Kanaram Jat s/o. Parsaram of village Champasi to arrange his bus, so as to reach hospital quickly. Accordingly, bus was arranged and injured was taken to the hospital, where

he was declared dead. On the basis of the aforesaid Parcha Bayan (Ex.P-10), FIR (Ex.P-13) under Section 302, IPC, was registered and investigation commenced.

During the course of investigation, site was inspected and the site plan (Ex.P-17) was prepared, autopsy was got conducted vide Ex.P-18, Panchayatnama was prepared vide Ex.P-20, dead body was handed over to the relatives vide Ex.P-23, clothes of the deceased were seized and sealed vide Ex.P-4, appellant – Sanwata Ram was arrested vide Ex.P-21, on the information of the appellant under Section 27 of the Evidence Act, Barchhinuma Kulhari was recovered vide Ex.P-8, site-plan of the place of recovery was prepared vide Ex. P-9. Blood smeared soil and controlled soil were seized and sealed vide Exs.P-15 and P-16 respectively and the statements of the witnesses under Section 161, Cr.P.C., were recorded. The seized and sealed articles were sent to the Forensic Science Laboratory (FSL), Jodhpur, for examination. Since the packets were not signed by the Investigating Officer and the seals were not appended on them, they were returned back to the Police. Then, the articles were deposited in the Malkhana. Thereafter, all the articles were signed by the I.O. and the seals were appended on them and they were sent to the FSL for examination. The report of serological examination was received from FSL vide Ex.P-29 and the report of chemical examination was received vide Ex.P-30.

After conclusion of the investigation, the Police filed challan against the accused Sanwta Ram under Section 302, IPC. Charges under Section 302, IPC, were framed against the appellant – Sanwta Ram. He pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 14 witnesses (PW 1 to PW 14) and produced 30 documents (Exs. P-1 to P-30). No evidence was examined in defence. In statement under Section 313, Cr.P.C., the appellant denied the correctness of prosecution evidence appearing against him and pleaded innocence. He stated that due to party fraction, a false case has been foisted against him. After hearing the final submissions of the learned counsel for both the parties, the learned Additional Sessions Judge (Fast Track), Ratangarh convicted and sentenced the accused by his Judgment dated 16.09.2002 as mentioned above.

Being aggrieved by the Judgment dated 16.09.2002, the accused – appellant Sanwta Ram has preferred the present appeal.

It is submitted by Mr. M.K. Garg, learned counsel for the accused-appellant that in the FIR, only one eye-witness Moola Ram has been mentioned and subsequently, the name of Mala Ram was also introduced. According to the learned counsel, both these witnesses have been falsely introduced. It is further submitted by the learned counsel that the ocular account given

by the witnesses does not find corroboration from the medical evidence. According to the deposition of the witnesses, only one injury was caused by Barchhi, whereas, the Police has recovered Barchhinuma Kulhari and PW 11 Dr.V.P.Goyal has also stated the this injury could have been caused by the weapon like Kulhari. Thus, according to the learned counsel, since the single injury is attributed to the appellant, the offence committed by the appellant at the most falls under Section 326, IPC or Section 304, Part-II, IPC and not under Section 302, IPC. It is also submitted by the learned counsel that according to the FSL report (Ex.P-30), the deceased himself was in a drunken condition. Thus, according to the learned counsel, since the deceased was in a drunken condition, he fell down and received injuries on his head and the appellant has been falsely implicated. It is contended by the learned counsel that the recovery does not connect the appellant with the crime as PW 1 Bajrang Singh, who took the articles for depositing in the FSL, Jodhpur, has deposed that when he went to the FSL for depositing the articles, an objection was raised that the articles do not contain the signatures of the I.O. as well as seal ('mohar') of the police station, therefore, the same were returned. The returned articles were deposited in the Malkhana. Then, on 13.05.2001,after signatures of the Investigating Officer and the proper seal ('mohar'), he again went to the FSL and deposited

the articles for analysis. Further, Bhagirath PW 13 has stated during the course of cross-examination that the lock and key were recovered by the Police, but the same were not produced by them in the Court. Thus, in this view of the matter, the learned counsel submits that the link evidence is missing. It is further contended by the learned counsel that neither any motive, nor any intention or enmity has been proved by the prosecution. Apart from that, there was no pre-meditation for causing injuries to the deceased by the accused-appellant. It is also contended that the complainant had filed a complaint before the Superintendent of Police, Churu that the present accused-appellant Sanwta Ram along with Magna Ram caused injuries to the deceased. Magna Ram was having a lathi in his hand. Thereafter, the complainant again filed a complaint in the Court on 20.06.2001 (Ex.P-12), stating therein that the present appellant as well as Magna Ram caused injuries to the deceased, but the Police has filed a challan only against the present accused-appellant. He also filed an application under Section 319, Cr.P.C., for summoning Magna Ram and taking cognizance against him, but that application was also rejected by the learned trial Court. Then he preferred a revision petition before this Hon'ble Court, but that too, was rejected by this Court. Thus, in this view of the matter, the learned counsel submits that the complainant wanted to introduce the false persons and

the present accused-appellant has nothing to do with the crime. In support of his submissions, learned counsel for the appellant has referred to the cases of Augustine Saldanha v. State of Karnataka (2005 SCC (Cri.)1313) and Ravi Kumar v. State of Punjab ([2006] 1 SCC (Cri.) 738). On the other hand, learned Public Prosecutor as well as learned counsel for the complainant have supported the impugned judgment dated 16.09.2002, passed by the learned Additional Sessions Judge (Fast Track) Court, Ratangarh.

Heard learned counsel for the parties.

PW 3 Dharma Ram has deposed in his statement that about eight months ago, while he was at his house, at around 10.30 P.M., Moola Ram s/o. Ladu Ram came to his house and informed him that Jetha Ram has been beaten by Sanwta and Magna Ram on the head, nose and chin. Then, he awakened his younger brother – Kalyana Ram. He also called his cousin Nanu Ram. Sanwara Ram also came there. Thereafter, they all proceeded to the place of occurrence, i.e., near Khejri tree, where Jetha Ram was lying in the pool of blood. He addressed Jetha Ram, but he did not respond. He further deposed that Mala Ram was sitting beside Jetha Ram. On enquiry, he revealed that Jetha Ram has been beaten by Magna Ram and Sanwanta Ram with Barchhi and Lathi. Then, they took him to hospital, where Doctor declared him dead. He also deposed that the Police

came to the hospital in the night and he made a Parcha Bayan (Ex.P-10) to the Police and put his thumb impression. When he was confronted with his Parcha Bayan (Ex.P-10), he stated that he also named Magna Ram in the Parcha Bayan, but the Police did not mention his name. He deposed that after five days, when he received a copy of the FIR, then he came to know that the name of Magna Ram does not find place in it. So, he made a complaint (Ex.P-11) to the District Superintendent of Police, Churu, in this regard and filed an 'istgasa' - a private complaint also (Ex.P-12) in the Court of the Additional Chief Judicial Magistrate, Ratangarh.

During the course of cross-examination, he stated that the place of incident is about 50-60 'pavandas' away from his house. When he went to the place of incident, Mala Ram was sitting beside Jetha Ram. He further stated that it was a moon-lit night. Sanwra Ram was asked to bring a camel-cart for taking injured to the hospital. He brought the camel-cart within 20-30 minutes. While taking injured to the hospital through village Champasi, Kana Ram of village Champasi was requested to bring his bus, so that the injured can be shifted to the hospital quickly. He brought his bus and they reached hospital around 11-12.00 in the night, where the Doctor declared him dead. The police came to the hospital and recorded his Parcha Bayan and he put his thumb impression on it. The police again recorded his statement

in the next day morning, near mortuary house. While he was confronted with his Parcha Bayan (Ex.P10) as well as the statement made in Ex.D-1 to the Police, he stated that he had revealed to the Police that Mala Ram was sitting near Jetha Ram. He also named Magna Ram as one of the assailants to the Police, but why the Police omitted his name, is not known to him. He also stated that in the portion A to B of Parcha Bayan (Ex.P-10) as well as his police statement (Ex.D-1), he has not stated that Jetha Ram was inflicted with Barchhi, but he has stated that the deceased was inflicted with 'Barchhinuma Kulhari'. He also disowned portion C to D of Ex.D-1 that on the day of the occurrence, in the evening, at around 8 – 9 P.M., his brother Jetha Ram had gone to the school of the village from his house. He also denied the suggestion that Jetha Ram had consumed liquor in the school and the dispute took place in the school, in which he (Jetha Ram) received injuries. However, he admitted that the deceased Jetha Ram was in the habit of taking liquor, but he disowned the suggestion, whether on the day of the occurrence, Jetha Ram consumed liquor or not. Lastly, he stated in his statement that it was wrong to say that due to party-fractions, Sanwta Ram has been implicated in the false case. This witness was cross-examined vigorously, but nothing could be elicited from his statement which may discredit his testimony.

PW 4 Moola Ram s/o. Ladu Ram is the eye-witness of the incident. He has deposed that about eight months ago, he was sitting in front of his house and Mala Ram was with him. He further deposed that at 10.00 P.M., Jetha Ram was coming from the school. When he reached near the Khejri tree, Magna Ram armed with lathi and Sanwta Ram armed with Barchhinuma Kulhari came there suddenly and inflicted with their respective weapons, on account of which Jetha Ram fell down. They gave him beating thereafter also. Sanwta Ram inflicted Barchhi blow on his head, while Magna Ram inflicted lathi blow on his head and back. They raised hue and cry. No-one came to the scene of the incident. Then, he left Mala Ram near Jetha Ram and went to call for the brother of the deceased and informed him about the incident. Dharma Ram, Kalyana Ram, Nanu Ram and Sanwar Mal came to the scene of the incident. In the cross-examination, he stated that he has given his statement (Ex.D-2) to the Police that Magna Ram was having lathi in his hand, he came to the scene of the incident and inflicted three blows with lathi to Jetha Ram. Sanwta Ram gave blow with Barchhinuma Kulhari on the head of Jetha Ram. He stated that how the police has mentioned Barchhi, is not known to him. His house is situated about 15 pawandas away from the place of the incident. He also stated that it was a moon-lit night. During the course of cross-examination, while he was confronted with his portions A to B

and C to D of the police Statement (Ex/D-2), in which he stated that "after reaching village Champasi, they took the bus of Kanaram and shifted Jetha Ram in it and went to Ratangarh Government Hospital, where the Doctor, on examination, declared him dead. Sanwta Ram, with intention to kill Jetha Ram, inflicted Brachhi blow on his head, on account of which he died" and "while Jetha Ram fell down, Sanwta Ram gave blow on the back of Jetha Ram with 'danda' of Barchhi, the witness stated that he did not give this statement, how the Police has mentioned it, is not known to him. This witness was cross-examined vigorously, but nothing could be elicited from his statement, which may render his testimony discreditworthy, so far as appellant Sanwta Ram is concerned.

PW 5 Mala Ram s/o. Tulchha Ram is the another eye witness. He has deposed that about eight months ago, this witness and Moola Ram were sitting near water-taps, situate outside their house. At about 10-10.15 P.M., Jetha Ram was going towards his house and when he reached near a Khejra tree (10 'pawandas' away from their house where they were sitting), Sanwanta Ram armed with Farsinuma Kulhari and Magna Ram armed with lathi came to the Jetha Ram and uttered that they would not spare him. Then, Sanwta Ram gave a Barchhi blow and Magna Ram gave 3 – 4 lathi blows. When we challenged them, they ran towards flour-mill. This witness further deposed

that he remained with Jetha Ram and Moola Ram went to call his brother. About ten minutes thereafter, Kalyana Ram, Dharma Ram, Sanwar Ram, Nanu Ram and Moola Ram came to the scene of the incident. Jetha Ram was lying unconscious. Thereafter, Jetha Ram was taken to the Ratangarh hospital, where, on examination, the Doctor declared him dead. During the course of cross-examination, he stated that the Police was called by the Doctor at Ratangarh hospital. The Police immediately recorded Parcha Bayan. His statement was recorded at about 10-10.30 P.M., next morning in the presence of Dharma Ram. This witness further stated in the cross-examination that while giving statement (Ex.D-3) to the Police, he has named Magna Ram as having lathi in his hand and having beaten Jetha Ram by it, but why the Police did not record this portion of the statement, is not known to him. He also stated that Sanwta Ram did not gave Barchhi blow on the back of Jetha Ram. He denied the suggestion made during the course of cross-examination that the scuffle took place in the school, in which deceased Jetha Ram received injuries. He also denied the suggestion that due to party-fractions, Sanwta Ram and Magna Ram have been falsely implicated in the case. Nothing material was elicited from the statement of this witness, which may discredit his testimony.

PW 6 Jaipal Singh has deposed that on 30-04-2001, he was posted as Head Constable in Police Station, Ratangarh. As

per directions of Station House Officer, he has recorded the Parcha Bayan (Ex.P-10) of Dharma Ram as stated by him. After recording the Parcha Bayan, he was sent to the Police Station for recording F.I.R. He submitted that Parcha Bayan before Nathu Singh, Inspector, who, on the basis of which, recorded the FIR (Ex.P-13). He further deposed that on 30.04.2001, the SHO Shri Ashwani Kumar has given him three sealed packets, containing a wrist watch, a sum of Rs.110/- and a silver ring, which he deposited in the Malkhana Register (Ex.P-14). He also deposed that on 02.05.2001also, the SHO has given a sealed packet, containing one Barchhinuma Kulhari, which he deposited in the Malkhana Register vide Ex.P-15.

Similarly, PW 7 Nathu Singh has deposed that on 30.-4.2001, he was posted as Assistant Sub-Inspector of Police (ASI) in Police Station, Ratangarh. On that day, at 3.00 A.M., Shri Jaipal Singh, HC, submitted the Parcha Bayan (Ex.P-10) of Dharma Ram before him, on the basis of which, Case No.76/2001 under Section 302, IPC, was registered.

PW 8 Kanaram has deposed that he is the registered owner of Bus No. RJP 6335. About 13 months ago, at about 12 O'clock in the night, Dharma Ram came to him and stated that Sanwta Ram has give a Barchhi blow on the head of his brother and Magna Ram has also given lathi blows. Dharma Ram brought Jetha Ram in the camel-cart. In order to reach hospital

immediately in the hope and trust that Jetha Ram may survive, Dharma Ram requested him to bring his bus and take Jetha Ram, who was lying unconscious, to hospital. Jetha Ram was having injuries on his head, nose and legs. On reaching Ratangarh hospital, the Doctor declared him dead.

PW 14 Investigating Officer – Ashwani Kumar has deposed that on 30.04.2001, he was posted as Station House Officer in Police Station, Ratangarh. On the day of the occurrence, at 2.30 A.M., he has recorded the Parcha Bayan (Ex.P-10) of Dharma Ram in the Government Hospital, Ratangarh and sent the same through Jaipal Singh, Head Constable, to the Police Station for recording F.I.R. He recorded the statements of the witnesses and carried out necessary investigation of the case. He also recovered Barchhinuma Kulhari as per information given by the accused under Section 27 of the Evidence Act. During the course of cross-examination, he stated that he has recorded Parcha Bayan (Ex.P-10) as stated by Dharma Ram. At the time of recording his Parcha Bayan, Dharma Ram has not stated him of giving blow by Magna Ram also to the deceased. The Investigating Officer admitted that the articles sent to the FSL were returned by them, raising an objection that the articles do not contain signatures and 'mohar'. Thereafter, he put the signatures and 'mohars' on the articles and sent the same for examination to the FSL, Jodhpur. The Investigating Officer also

denied the suggestion made during the course of cross-examination that the recovered article is Kulhari and he has written Barchhinuma Kulhari. He also denied the suggestion that on the day of the incident, deceased had consumed liquor and the dispute took place. Nothing was elicited from the statement of the Investigating Officer, which may hamper the prosecution case.

So far as the returning of the articles by the FSL in the absence of necessary signatures of the I.O. and 'mohars' is concerned, the statement of the IO stands testified from the statement of PW 1 Bajrang Singh, F.C. No.350, of the Police Station, Ratangarh, who is carrier of the packets. He has deposed that on account of not having having seals and 'mohars' of the I.O., on the packets, he brought them back from FSL to the Police Station and deposited the same in the Malkhana. Thereafter, objection (of putting signatures of I. O. and 'mohars' on the packets) was met out and on 13.05.2000, he deposited the packets in the FSL in sealed condition.

So far as recovery of Barchhinuma Kulhari, at the instance of the accused Sanwta Ram is concerned, PW 13 Bhagirath Ram has deposed that the accused in his presence unlocked his Jhumpa, entered in it and brought a Barchhinuma Kulhari. Blood and hairs were found stuck on the Barchhinuma Kulhari, which was seized and sealed by the I.O. in his presence. During the

course of cross-examination, he admitted that the lock and key were seized by the Police, but whether the lock and key were sealed by them or not, is not known to him. He also admitted that the length of 'danda' of the Barchhi was about 3 – 3.1/2 ft.

So far as medical evidence is concerned, PW 11 Dr. V.P. Goyal has deposed that on 30.04.2001, he was posted as Medical Jurist in the Government hospital, Ratangarh. He had conducted the post-mortem examination of deceased Jetha Ram, aged 20 years and prepared Post Mortem Report (Ex.P18). He found the following injuries on the body of the deceased :-

> "1.Superficial Abrasion 2 cm. Length anterior portion of nose – clotted blood.
>
> 2.Superficial linear abrasion ½ cm length on the chin - clotted blood.
>
> 3.Bruise 25 cm x 1.1/2 cm. Horizontal place across the back.
>
> 4.Bruise 15 cm. 1 cm. Oblique placed across back over Thoracic Lumber region.
>
> 5.Incised wound 20 cm. x 3.4 cm. x upto brain matter (after cutting underline bone) over parieto occipital region Right side of scalp oblique placed.
>
> 6.Fracture of parieto occipital bone right side of skull".

In the opinion of the Doctor, all the injuries were ante-mortem in nature and were sufficient in the ordinary course of

nature to cause death. The cause of death was Coma - death due to head injury.

As per FSL report (Ex.P-29), seals of the articles were intact and human blood was found on Bushit, Baniyan, Pant, Necker and Kulhari.

So far as the authorities referred to and relied upon by the learned counsel for the appellant are concerned, it may be mentioned that in **Ravi Kumar v. State of Punjab (Supra),** quarrel had taken place on previous day between deceased and accused-appellant. On the next, the deceased was called by one Ghandarav Singh to get the dispute settled with the accused. The said Gandharv Singh had placed a 'dhangu' behind him. During the course of the talks, a quarrel again ensued between the deceased and the accused. Then the accused picked up a 'dhangu' placed behind Ghandharav Singh and gave two blows on the head of deceased, who later died in hospital. In these circumstances their Lordships of the Supreme Court convicted the appellant under Section 304, Part-II, IPC, instead of Section 302, IPC.

In Augustine **Saldanha v. State of Karnataka (Supra),** the incident took place in the dark night when the visibility was poor and the accused gave only a single blow with stick on a vital part of the body. Then, in such circumstances, their Lordships of the Supreme Court held that since the blow was

said to have been delivered with a stick and in pitch dark night-time, it could not be reasonably be stated with any certainty that the accused chose that vital part of the body to inflict the injury and that the blow which was aimed without any of such specific intention could have landed on the head due to so many other circumstances, than due to any positive intention. Thus, on the basis of the peculiar facts found in that case, the conviction of the appellant was altered from Section 302, IPC to Section 304, Part-II, IPC. However, while altering the conviction, their Lordships of the Supreme Court also noted that it cannot be said as a rule of universal application that whenever single blow is given, application of Section 302, IPC, will be ruled out and even a single blow delivered with a heavy or dangerous weapon on a vital part of the body would make the offence a murder.

In the instant case, the specific evidence of Moola Ram P.W.4 and Mala Ram P.W.5 is that the appellant Sanwta Ram has given a Barchhi blow to the deceased Jetha Ram. The Parcha Bayan was also recorded immediately in the hospital. There appears to be no reason for P.W.4 and P.W.5 to falsely implicate the appellant Sanwta Ram.

Turning to the guilt of the accused, it may be mentioned that the appellant has caused single injury on the head with Barchhinuma weapon. Thus, it appears that he had no intention to commit the murder of deceased. He can at the most be

clothed of knowledge. No doubt, he has inflicted a blow on the vital party of the body, i.e., head, but there is nothing to attribute him the intention to kill. There was no previous enmity. The incident occurred in the spur of moment. Thus, taking into consideration all the facts and circumstances of the case, we are of the view that it is not a case of murder but culpable homicide not amounting to murder punishable under Section 304 Part-II, IPC. The learned trial Court committed error in convicting the appellant under Section 302, IPC.

Consequently, the appeal is partly allowed. The conviction of the Appellant Sanwta Ram is altered from Section 302, IPC to Section 304, Part-II, IPC. He is sentenced to eight years rigorous imprisonment. The sentence of fine shall, however, remain intact. The appellant is in jail, he will serve out the remaining part of the sentence.

(R. P. VYAS), J. (N. N. MATHUR), J.

scd.